Govern. Politics vol 3.

AN

ESSAY

Concerning the ORIGINAL of

SOCIETY, GOVERNMENT, RELIGION and LAWS,

Especially those of the PENAL KIND.

By a Person of Quality.

LONDON,

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TO THE READER.

THE following Diſcourſe, ſaving two or three Paragraphs at the Concluſion, was compoſed ſeveral Years paſt, in anſwer to certain pernicious Doctrines that had then ſlyly crept into the Preſs, and were from thence convey'd into the Hands of ſome Gentlemen, who were delighted with Paradoxes that contradicted ſolemn Truths, in which our Forefathers and Maſters took care to inſtruct us, and which had a cloſe Connection, Correſpondence and Relation to our moſt juſt Ideas. And as the Eſſay was deſign'd to no other end than to ſecure our Principles from Barbarity and Libertiniſm, ſo it may ſerve as a neceſſary Tribute to their Curioſity, who think So-

ciety, Laws and Religion to be Names given to Impoſture: For ſhould this Hypotheſis gain credit, the Foundation would fail, on which all Juſtice and Order, all divine and civil Inſtitutions, have their Superſtructure.

I am not inſenſible that a learned and judicious Perſon hath lately delineated the Law of Nature *in a cloſe Method of arguing; but as his Book was publiſhed a long time after the preſent Sheets (a Page or two excepted) were formed; ſo I am glad to find their mutual Agreement in the main Articles. And as it could be no Diſſervice to* Cicero's *Son, or other* Roman *Student, to peruſe the Works of one of his own Countrymen, compos'd at* Tuſculum *or the* Baiæ, *as well as the more refin'd and ſubtle Performance of* Chryſippus *at* Athens; *ſo no one may have juſt Cauſe to complain (of ill Manners at leaſt) that I preſent him with ſome Flowers that grew in a common Field, and not within the Encloſures or Garden of the Philoſopher.*

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ESSAY

Concerning the ORIGINAL of

SOCIETY, GOVERNMENT, &c.

THAT Man is a ſociable Creature, is a Truth not to be called in queſtion, unleſs we ſhut our Eyes to our own Experience, or are not at the leiſure to act and to conſider as rational Beings, furniſh'd with the peculiar Advantage of Speech, which ſerves as a quick Meſſenger to our Thoughts, and with other Accommodations of Nature ; many of which cannot be exerted but by Communication, nor be fully enjoy'd without concurrent Supplies, interchangable Benevolences, and the reciprocal Intelligence of Minds.

God made us dependent on himſelf, to let us know we claim nothing but what is the Reſult

Reſult either of his original Gift, or of his continued Providence: He made us dependent one on another, to evidence we were not born for our ſelves, and that the common Intereſt of the Species is not to be reſolv'd into the ſeparate Gratifications of ſome few Individuals, excluſive of others who are endued with the ſame Powers and Faculties, and have a like Title and Pretence to Happineſs.

What is agreeable or diſagreeable to human Nature, tho it be referr'd to the Opinion of the more general, yet is to be reſolved by the Judgment of the more ſound Part; for that ſome giddy People ſuppoſe themſelves not oblig'd by the Forms as others are, is a Jaundice of Mind which takes things in a falſe Colour; ſuch ſick Conceits are to be remitted for a Cure to the Hoſpital, rather than to be adopted into the Schools.

The Partiality implanted in us to our own Intereſts and Welfare, is an Inclination no ways interfering with the publick Good, ſince the Regard to our ſelves is general, equally avow'd at all Times, and in all Places, by every one deſcended of human Race: ſo that the Tenor of Self-love muſt conſequently oblige every body, and center in the neceſſary Reaſon of having all preſerv'd, and in a due manner gratify'd.

Which cannot be perform'd without allowing others the Privilege of the ſame Appetites, Wills and Deſires as we have; of being kind and favourable to themſelves, of being pleas'd

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and diſguſted in the Meaſure and upon the Motives we are. And therefore, that all may be contented, we muſt do to others, as, if it were put to our Election, we would they ſhould do to us.

Nor muſt we invade their Peace, that we our ſelves may be ſecure, and avoid the Danger of Reprizals; there being no Safety where all have an eſtabliſh'd Deſire and Opportunity of inſulting; which would be the certain Fate upon the Suppoſal of our being naturally involv'd in a State of War.

Let any one err magiſterially, and ſtrain to an Extreme of Compariſon with reſpect to his own Merit, Virtues, and Qualifications, he ſeems unwilling the Miſtake ſhould be epidemical, or that others ſhould be furniſh'd with the like Pretences: and, however ſuperlative his Fancy is, he is not really the Perſon he thinks himſelf; being no more than what others are willing to think or permit him to be.

The Senſe of his confin'd Proſpect (were he encourag'd in his Dream) would inſtruct him to commit the Cuſtody of his Palaces, Treaſures, and of all things valuable, nay, even of his own Perſon, to the Care of his Friends, to ſecure them from Invaders; and this Precaution imports Confidence in others, as well as Self-Inſufficiency.

His Authority and Rule implies Subjects; and that they may not gain an Aſcendency over him, mutual Good-will muſt interpoſe;

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at leaſt a gay Pretence to it, according to the *Florentine*'s Maxim.

His various Fears, which are natural Evils (or rather Evils in the State of Nature deprav'd) to him moſt preſſing, and ſingularly ſuch, call for Relief.

His Pleaſures ſuppoſe and beſpeak Companions, as his Wardrobe and full Tables are owing to foreign Contributions.

For he lives upon borrowing; the Sacrifice of ſlain Beaſts, Birds, and Fiſhes; the Fruits, Bloſſoms and Flowers of Trees and Vegetables (the Spittle and Excrements of Worms and Vermin not excepted) being the neceſſary Tribute paid to his Shame, Impotence and Miſery, and which cannot be render'd of uſe to him without miniſterial Aids.

Nor do the Advantages of his Fortune, Birth and Acquiſitions, however they diſtinguiſh his Intereſts, afford him a ſeparate Enjoyment.

His Ceremonies and Modes of Complaiſance are not mere Formalities, but have their Foundation in an agreeable Congruity and Expedience; being no other than the common Standard of Cuſtom, or Rule of Manners, excluſive of undue Preferences to himſelf: ſo that by a ſpecious and florid Air of Converſation, he openly avows his good Purpoſes, and tacitly inſinuates what Returns he expects from thoſe whom he does court or oblige.

And even the Reaſon of his natural Thirſt after Honour and Eſteem, tho it be a mere airy Satisfaction, depending on popular Breath or propitious

propitious Votes, is to be reſolved into the Will of God, who, for the Good of others, makes us endeavour to recommend our ſelves with Advantage to them, that they may reſpect and reverence us.

The Complexions of Men are copiouſly diverſify'd by the ſame unerring Hand, that all may be pleaſed: For the fair and the not fair meet, and out of the different Features and Lineaments of Bodies, the inward Harmony of Souls is compoſed. 'Tis remarkable alſo how at the firſt Interview of Strangers, there ariſes a natural and ſtrong Affection in one Perſon to another; tho he who is acceptable to the firſt, is leſs pleaſing to a ſecond; but ſo, as every one has ſome Object, to which he is recommended by the Favour of an agreeable Genius, and of the volatile Atoms mutually emitted and received. And thus the deformed and otherwiſe inconſiderable find thoſe who careſs and pity them.

That there ſhould be a peculiar Fondneſs between Parents and Children; and that both the lineal Stock and the collateral Branches ſhould produce a natural Tenderneſs as well as Alliance, is no leſs ſtrange than that a Tree ſhould bear Leaves and Fruit; and yet there are ſome Endearments of a remoter Extraction, that work more powerfully than thoſe of Conſanguinity it ſelf. And from this Root the juſteſt Reaſon of the Diſtinction between a Brother and a Friend does ariſe.

'Tis truly affirmed, that by giving our Love we beſtow all, and by an exchange of Hearts the Lover and Beloved have the ſame Will and Enjoyment. Theſe and various other are the Charms of perfect Friendſhip, as we take the Deſcription from thoſe that have felt their Efficacy: And tho they are not ſo powerful, as to their manner and degree, in ſome as in others; yet it muſt be acknowledged, that the Powers of Sympathy ſtrike with an irreſiſtible Force, that good Blood and Spirits have their Emotions; that there is an aſſured Pleaſure in the Exerciſe of Beneficence, Generoſity and Gratitude, and that Tenderneſs and Compaſſion are engraven in our Bowels; ſo that our very Fleſh, which in too many Inſtances incline us to Evil, in this caſe is truly obſerved to prompt us to our Duty. At the ſame time they who are moſt ſevere and difficult in their Addreſs, have neither the Power nor Opportunity to prevent the Cure that is provided againſt a ſtupid Inſenſibility, or the ſurly Qualities of Men.

For Providence has directed the Sweet and Muſical Tempers to qualify the Sour and Saturnine; whereby its own Ends are juſtly accompliſhed and tuned to the Benefit of us all. And as there is a Sphere in Nature; ſo it is enough for all Ages in the World, that one ſuch Man ſhould at any time be produced, who is not concerned neceſſarily in it. This Monſter is either too big, or too little for the Creation;

ation; for in what Orb to place him we cannot yet diſcover.

By the common Language of Mankind he is called the *ſolitary*, having no Friend to aſſiſt him, and who can ſcarce boaſt he has no Enemy, ſince he is obnoxious to the bad Effects of his own Diſcontent, and affected Humility; in which Characters Pride may bear the Aſcendant, becauſe, as the Philoſopher obſerves, there may ſometimes be as much of that Leaven in ſeeming to think too meanly as too prodigally of our ſelves: He that labours under this Circumſtance cannot be alone, and he muſt fly himſelf, if he would avoid the worſt Companion.

And truly, notwithſtanding he deſpiſes foreign Helps, yet we, who are neglected by him, may on occaſion command and enforce his Aſſiſtance; for tho he is pleaſed not to exact the like Debt from us, he is not thereby exempt from the Duties we expect from him: And therefore he muſt die to himſelf, who will not live to another's Good.

We may, however, ſuſpect Mens Caprice when they diſcourſe, whilſt their Actions give a more perfect Copy of their Thoughts; it being uſual to appeal from ſententious Paradoxes to a Sophiſt's Life: For in progreſs of Time the Humoriſt may be found not to be miſtaken in Fact tho he be in Pretences, Nature frequently recoiling and teaching him a Compliance agreeable to thoſe Obligations, of

which he before ſcorn'd to make a verbal Acknowledgment.

And certainly there is leſs danger from any ſuch Man-Avoider, or ſelf-denying Perſon, than from many others, whoſe horrid, vile, or enormous Deeds drive them into the dark, where they were at firſt conceived, and thence take their Denomination.

Guilt is apprehenſive, and never thinks itſelf in Safety, or out of Harm's way, but retires to Caves and Deſerts; having this property with Falſhood, that it dreads a Diſcovery; nor is it a Surprize that many profligate Men, otherwiſe well inclin'd to Society, ſhould avoid the Community of their Neighbours, whoſe Reſentments they juſtly fear: So that their withdrawing from the Approaches of others is their Neceſſity and Curſe rather than their Choice, the Diſtemper of their Minds being equal to that of the Demoniac, who convers'd among the Tombs, or of ſuch who have fancied themſelves Glaſs, or Porcellain Ware, being in a conſtant Fear of a fatal Touch, and dreading every one's Breath.

That Perſons led by a religious Zeal, or the Spirit of Philoſophy, into the Shade or Wilderneſs, ſhould deſignedly avoid the Clamour of the Multitude, is no more a Prejudice to the natural Deſire of Man to be well affected to his own Kind, than for the holy *Antonius* to be an Enemy to Light, becauſe he once complained that the Morning Sun-beams did ſtop the Career of his extatic Devotions. They who

who ſhun Company for the beſt Purpoſes, ſeldom deny Acceſs, or the Advantage of their Counſels and Diſcoveries to their Friends. *Abel* and *Enoch* themſelves, the two grand Patriarchs of the Contemplative, were no leſs converſible than divinely attach'd, in whoſe Character Nature and Grace conſpired.

The malicious and envious Man-haters carry about them their own Torment: It being a Remark juſtify'd by Fact, that they are the only Perſons to whom, without form of Juſtice, or breach of Charity, we may do harm: Since to occaſion them Hurt or Miſchief, we need only be well inclined and beneficent to their Neighbours.

Among the very Brutes, we find the Diſtinction into the Solitary and Gregal, to ariſe from a well-order'd Deſign in the Frame of this lower World: For Beaſts of Prey, thoſe eſpecially of the fierceſt kind, are generally of ſuch Strength, that they are better enabled to ſupport themſelves by their own Force, than the others can be ſuppoſed to do. And when they range abroad, 'tis their whole Buſineſs to be imploy'd in that Care which they uſually perform without many Witneſſes to their Atchievements; but ſhould they incline to herd, they would grow formidable to the reſt of the Creation: And therefore God has made them few in proportion to other Animals, appointed their Habitations in remote and dark Receſſes, and directed their Excurſions for the greateſt part in the Night, when moſt other Creatures are in

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ſome meaſure ſecure. And, as many of the Salvage * ones occaſion the Death of others; ſo ſeveral are inſtrumental to their own, as the Lions which tear out their Eyes in queſt of the Gnats, by whom they are infeſted, or drown themſelves to avoid being teazed and tormented by them.

Other Creatures that are harmleſs, or of neceſſary uſe to Man, appear in numbers; and they are the more fond ſo to do, the more weak and impotent they are: And is not Man himſelf under the ſame or greater Neceſſity of performing good Offices, of beſtowing as well as receiving Benefits? His helpleſs State in Infancy, and the Infirmities of Age, his impendent Diſeaſes and various Wants proclaim his frail Condition. And are not the Inſulters of Mankind to be prevented from committing Outrages and Miſchief on their own Species?

But as we diſtinguiſh between a Herd and Society, ſo 'tis apparent our ſocial Diſpoſition does not ſpring from mere animal Affections and Appetites, which are common to us with Brutes; but from Principles that entitle us to higher Perfections than thoſe that are confined to the low Region of Senſe.

Thoſe very Affections and Appetites are indeed the Bleſſings of Providence, and therefore not to be neglected; brought with us into the World, and therefore to be entertained as

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* Pier. Hieroglyph, l. 1. c. 10. Ammian. Marcel. l. 18.

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the Motions of an inferior Law, that may in ſome Inſtances be ſuperſeded or transferred, but not wholly abrogated.

God himſelf, who is the Foundation of Reaſon, as well as the Author of our Nature, hath adjoined his Suffrage to our Inclinations; and to ſuppreſs them would be unreaſonable, and not to allow their Influence would be unnatural: and in both Caſes we might ſeem to queſtion the Wiſdom and Authority of our Maker.

But how differently they operate in Man, who is a free Agent, from thoſe in Beaſts, will be declared: nor can I paſs over what a reverend Author has ſaid, that as there is no Man ſo refined and elevated, but gives frequent proof that he is ſubject alſo to Inſtincts and Paſſions; ſo there is no one ſo addicted to an Animal Life, as to ſhew no Signs of an higher Principle in him.

The Learned, in the Advancement of a Natural Hiſtory, remark a * Climax, or the gradual Perfections from one Species to another, from Plants to Brutes, and from Brutes to Men; but agree, that tho ſome other Creatures in the Frame of their Bodies do much reſemble Men, yet notwithſtanding the wanton Invention of the Antient, they are wholly Brutes.

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* Dr. *Tyſon* Hom. Sylveſt. p. 5. Scal. Com. in hiſtor. de Animal. l. 2. c. 13.

And,

And, as we follow Nature's Clew in the Labyrinth of the Creation, we obſerve a Gradation not only in the Formation of Animal Bodies, but in their vital Energy; the Genius of irrational Creatures being diſcovered to be a great Demonſtration of that ſupreme Wiſdom by which they were made, where the Modification of Fancy, and its † Combination with Senſe and ſenſible things are, with ſo much Art, contrived, as in very great variety to imitate the intellectual Operations in Mankind: The Divine Reaſon running, like a golden Vein, thro' the whole leaden Mine of Brutes, as a late Philoſopher ingeniouſly explains it.

And tho we juſtly admire the Care Creatures have of their Fœtus, their forming of Cells and Repoſitories, and other Inſtances of their Sagacity analogous to Commonwealths; yet 'tis concluded thoſe Operations of Brutes are not improveable beyond their own Kind; that the Brutes work by a phyſical Neceſſity, not electively, or propoſing to themſelves an end as Man does.

To which is added, that as all thoſe Inſtincts of *Brutes*, in the ſeveral Species reſpectively remarkable, are in Man conjunctly conſpicuous, (Mens inward ſenſe being quicker, however his outward may be ſlower than ſome of theirs) ſo thoſe Inſtincts of *Brutes*, and even their Antipathys are rendred of ſervice to Man, and

† Dr. *Grew* in Coſmolog. l. 2. p. 42.

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directed for his uſe and advantage: for Man does both enjoy and ſee the Goodneſs of every Thing, whereby the Happineſs of all other Creatures becomes his own: And his Intellectual Operations are the ſpecific and diſtinguiſhing Character of his Nature, to which (however we abandon our Reaſon and ſink into the *Brutal* Temper) *Brutes* cannot ariſe, and which (notwithſtanding our many Forfeitures) we cannot wholly abdicate. The neceſſary Reſult of our reflective and progreſſive Thoughts, the Judgment of Conſcience, the frequent Conteſt with the Animal part, and with ſelf Complacency for the Publick Good, and other free Operations, that thwart ſome apparent Pleaſure and boſom Intereſt, diſcover by what Powers, ſuperior to thoſe of *Brutes*, we are directed to the common Benefit and Perfection of the Species, and to the Duties by which we are oblig'd as Men or Fellow-Creatures ſprung from one (and that a much higher) Stock; which is a more general as well as more permanent Relation than mere incidental Alliances, the Tyes of Neighbourhood, contracted Friendſhips, and other occaſional Endearments; the firſt being the great Maſter-Wheel by which all the others are influenc'd, mov'd, and commanded.

It would be loſs of Breath as well as of Time to follow in Chaſe ſome extravagant People, who loſe the Sight of themſelves, and forget their Forefathers, in a wild Purſuit after a State of Nature; whereas 'tis evident all Mankind together were never under a mere natural State,

nor may there any ſuch State be ſuppos'd unleſs qualify'd: And in deſcribing an imaginary one, *'tis foul play*, as Counſellor *Puffendorf* well obſerves *, *to found it in a Neglect, Abuſe, or Defiance of Reaſon's ſober Voice, which is by Nature conſtituted the ſupreme Directreſs of human Proceedings, according to a common, firm, and uniform Meaſure, namely, the Nature of things, which is free and ready to offer it ſelf in the manner of Inſtruction, in the general Precepts of living, and the Dictates of natural Law.*

In ſhort, Man is the nobleſt Creature upon Earth, the Lord and Governor of the inferior World, himſelf a little World in whom are ſeveral diſtinct Powers, ſome placed in Superiority, and entitled to command, others put in Subordination, and aſſigned to obey. His Will gives him Freedom of Choice, his Appetite inclines him to what is grateful; by his Paſſions he ſtrongly purſues and reſents: His Underſtanding holds the Reins of Empire, and dictates as a Sovereign. Now what ſhould be the natural Law of ſuch an Agent, ſo adorned, ſo inclined, and ſo determined, is not difficult to diſcover.

The Harmony of the more inferior Faculties with the Will, and the Conformity of the Will to the Underſtanding, is the intimate deſign of that Law; ſo that they may be ſuſpected of

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* Puffend. de L. nat. L. 2. c. 2. §. 9.

Opiniatréte

Opiniatréte who debaſe our Species, and will not allow Reaſon and Moral Dictates to have any claim to a foundation in our Nature, but repreſent them as a violent Inſult upon it, the Effect of Pride, and as a Prejudice impos'd with Tyranny: whereas no *Memoirs* can be produc'd when Mankind were not under thoſe Powers; nor any Scheme laid where ſuch a Subjection would not be neceſſary. If the more perfect, or, as I may ſay, the ſyſtematical Account of our Duty be attain'd by gradual Motions, aſſiſted by Education, and forwarded both by Experience and external Helps, does not the Order and Exigencies of our Conſtitution, and conſequently the Circumſtances of our Nature (by which we are endow'd with a Readineſs to communicate, and with a Genius to improve) require it; and hath not the Law of our Nature an equal reſpect to our Neceſſities and Capacities?

Our Deſire after Knowledge is indeed inſatiable, and when we make any new Diſcoveries, we may be ſaid truly to taſte and enjoy an Object, as Beaſts do in their ſenſual Gratifications: But yet all Truths are not alike abſtruſe and obſcure, but many that are of univerſal Importance in the Conduct of Life, are the more obvious to every Capacity; and by whatever Mediums we arrive to the Knowledge of them, they ſerve as general Problems allowable by ſober Men to be a part of Nature's Law; of which ſort are ſeveral Maxims that reſult from the conſideration of created Beings, or that refer to the publick Benefit of

Mankind; ſuch in particular as that he who made us is to be acknowledg'd and reverenc'd, that Good is preferable to Evil, and by ſo much the more preferable by how much extenſive it is.

And ſince rational Principles are diſcovered by the rational Effects they produce, the Practices of Men, where Negligence and unruly Luſts have not introduced Darkneſs and Diſorder, have appeared to have been the genuine Iſſue, or natural Birth of thoſe Principles. They having with ready Inclination ſubmitted to thoſe and the like neceſſary Terms of their Conſtitution, whereby its Glory and Happineſs hath been ſecured.

At the ſame time we ſhould have a new Theory in Nature, if Children ſtood in no need of their Parents, or Men deny'd the beſt Advantage of their Senſes and Faculties; a new Edition of Manners, if there were not a Progreſſion and Advancement in the moral as well as natural State; a new Method in Logic, if we were not to obſerve, reflect, diſcourſe, and premiſe before we draw Concluſions. As tho Perſons in their Nonage ſhould *per ſaltum* attain the Perfections of Youth and Manhood, and be capable to expreſs their Knowledge of things in a full Maturity of Judgment; or that in Madneſs, old Age, or other phyſical Impotence, or unavoidable Obſtructions, the Knowledge of them ſhould not be in ſome meaſure clouded, as alſo by a wretched uncultivated State, whereby 'tis apparent

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many Mens Minds may be as much infected as the Blood of an unhappy Infant by the Breaſt and Breath of an unwholeſom and ulcerated Nurſe.

What a ſad Inheritance of Ignorance, Vice, and Folly, may be entail'd and tranſmitted to Poſterity is not difficult to be conceived: for it was not impoſſible, but that even a *Perſian*, *Lacedemonian*, or *Chineſe*, however celebrated the People of his Country were for Knowledge, Truth, Temperance, and ſome other Virtues, might, in a deſperate Frolic, have either neglected the Education of his Deſcendants, or have depraved their Imaginations, and encouraged in them an Inclination to Evil. This I confeſs, he might have done, and ſo he might alſo have ſtarved them, or adminiſtred Poiſon inſtead of Food or Phyſic, and thereby have communicated to their Bodies a deſtructive Taint: But he had generally a better Senſe of his own Duty, and was not forward to beget in his Family ſuch an accurſed Image, as the Degeneracy of ſome other Nations produced.

If it be demanded from whence the Law of our Nature ariſes, it is very properly anſwer'd, that as there was a Decree exiſting in the Mind of God, by which all things are directed by ſuitable Means to their proper Ends; ſo according to the Language of the very Heathen Juriſts, as well as of the holy Penmen, the Diſpoſition of things, whereby the whole Machine of Nature and of Nature's Productions,

tions are determined by the ſaid Decree, does bear the Name of a Law *. And in this large Acceptation of the Term, the Divines and Lawyers are to be underſtood, when they affirm, that the Purpoſe of God's Will, remarkable in his own external Operations, and in the Courſe of natural and voluntary Agents, is an eternal Law, reſpecting his own Works of Creation and Providence, the neceſſary Motions of the Inanimate and Senſitive, and the free Agency of Rational Beings; and that from this greater Law (which hath her Seat in the Boſom of God, and her Voice in the Harmony of the World) all others derive their Source.

For God, as Mr. *Hooker* ſpeaks †, *did not command the World and all things into a Being and bleſſed State, barely to ſignify the Infinity of his own Greatneſs and Power, by the eaſy Accompliſhment of ſuch Effects, or only to ſhew he was a voluntary and not a neceſſary Agent; but to evidence a natural Law was then inſtituted to be obſerved by his Creatures: And therefore, according to the manner of Laws, the Inſtitution thereof is deſcribed by* Moſes *in* Geneſis, *as being eſtabliſhed by ſolemn Injunction: His commanding thoſe Things to be which are, and*

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* Cic. 3. de Leg. c. 2. L. 1. Tit. 1. §. jus naturale. Dig. 1. de Inſtit. & Jure.

† *Hooker*'s Eccleſ. Polit. L. 1. §. 3.

to be in ſuch ſort as they are, to keep the Tenure, and perſevere in the Courſe they do, importing the Eſtabliſhment of Nature's Law.

To things inanimate and irrational this is a fixt Standard and Meaſure, being a Law in a metaphorical Senſe; to the intellectual and free Agents, a Law in the more proper Notion of the Word, not to be avoided as to the Obligation, however it be contradicted by Practice. So that Man being a rational Creature, he muſt be influenced by *the Judgment of Reaſon, determining what the Will and Mind of God is, relating to the doing or not doing what is conſentaneous or diſſentaneous to human Nature* *: and being a moral Agent, he muſt govern his Will and Appetites by the Dictates of his Underſtanding, and not permit the Slaves to grow Maſters.

And tho Man, by ſuppreſſing the Outcry of his Conſcience, has a Power, (as in all immoral Aberrations) when he is influenc'd by a vicious Taſte and maſterly Paſſions, to impoſe upon others, and to determine himſelf on the falſe Side, yet he thereby acts monſtrouſly and unnaturally, which Creatures of a lower Claſs are not fond to do: And as there can be no greater Reproach to human Nature; ſo by this Conſtruction, we may ſuperadd to the Poet's Paradox, and affirm, that Man does

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* Suarez. de LL. l. 2. c. 6.

not

not only differ as much from Man, as Man from Beaſt; but that his differing in this Caſe from the Beaſt, is a vile Abuſe of his Reaſon, to which he owes as intire Subjection as the other to Senſe.

They who pretend, according to their uſual Gallantry, to preſent us with more maſterly Strokes relating to the natural State, ſhould not, methinks, place us in a worſe Condition than Brutes. If, as thoſe wiſe Men ſuggeſt, more than one Man and Woman were at firſt produced, without Guardian, without Tuition, without Exemplar, without Diſcipline; 'tis evident however, they ſoon concurred in certain Meaſures that obtained a general Approbation. The higher Forms in Nature's School, and the Character of Adepts could not have been immediately obtained; the whole Aſſembly then conſiſting of Novices of equal Powers, Proſpects, and Qualifications, who all in time might have gained the Improvement of Graduates: The lower Rudiments were learn'd with leſs Trouble, and quicker Diſpatch, than Concerns of wider Extent and Moment; and yet the latter muſt afterwards have become familiar enough. Thoſe Perſons who came into the World by their Parents Help, (and 'tis ſtrange, except we refer to a Creation, that any ſhould have leapt into Being without it) muſt neceſſarily have received many Impreſſions; for the Weakneſs and Impotency of their Conſtitution made the Parents Care neceſſary; nor is it probable that natural

Love

Love ſhould not have prompted them to have cultivated and adorned the Minds of their Children, as well as to have fed and cloth'd their Bodies. The common and moſt uſeful Parts of Knowledge, which the Parents had before either received or imbibed, became thereby communicated by oral Conveyance to their Poſterity, who themſelves at length grew Parents and Maſters too, as well as their Forefathers, and ſo the Trade of teaching and of being taught, gained a continued Succeſſion.

Whatever Blemiſhes our great Reformers of Nature diſcover by their artificial Glaſſes, in its moſt primitive State, we may inform them that were there any Defects, if we may ſo call them, they were not the Production of Chance, irregular Choice, or Impotency, but fix'd therein by the commanding Power of an all-wiſe Diſpenſation, which reſerved to it ſelf the Prerogative of being ſelf-ſufficient and independent. And tho they take it to be their Wiſdom to charge God with Fooliſhneſs; yet they may be aſſured our Nature received its real Imperfections no otherwiſe than from ſuch Sinners as themſelves, but borrowed a native and bright Beauty from the Divine Reflection, to which if they would have regard, they might diſcover what Reaſon they have for their Modeſty, and other their Obligations; nor would they deny that what makes for the Conſervation and Perfection of our Species, is a ſtanding Law: For the Nature of Man's Will conſiſting in the Conformity of the

Mind to the Intellect, which does judge what is commodious to our ſelves and others, we muſt be preſumed to deſire the ſame, becauſe the Will does follow the Dictates of the ſuperior Faculty *.

Now as all the Acts of the Will, commanded or recommended by the Law of Nature, are morally good, and tend to the Happineſs of Mankind; ſo that this End might be accompliſh'd, the great Creator did not indulge them in an unreſtrained Liberty to ſpeak and act at Pleaſure †, from Reaſons ariſing either from their primitive, or from their acceſſory State: but as the Gifts and Enlargements of the Mind were beſtowed for juſt and good Purpoſes, ſo it was neceſſary thoſe noble Endowments ſhould be under Culture and Regulation, that the Voice of Reaſon might not be ſilenc'd by the raſh Outcry of Luſt and Licentiouſneſs.

Nor does the Infringer of this Eſtabliſhment eſcape the Power of the ſuperior Juſtice; the Divine Deſignation having made an eſſential Diſtinction between Good and Evil by their neceſſary Effects, natural Evil being the Product of that which is moral.

And whereas Men are by Nature ſo far in a State of Equality, as to be bound by one and the ſame Standard which Reaſon aſſigns, he that tranſgreſſeth that Law declares his Reſolution of either quitting or inſulting the

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* *Cumber.* de Leg. Natu. c. 3. §, 4.

† *Ibid.* c. 5. §, 5.

common

common eſtabliſh'd Fence, and thereby becomes dangerous to the Species; ſo that all Men have a Right to retribute to the Offender in ſuch a Proportion as may ſerve for Reparation and Reſtraint. The Law of our Nature having not only preſented to us the Meaſures of our Duty; but in caſe of Injury and Violence, allowed a vindictive Reſort, from which no Perſon can be excuſed, by an Appeal to Favours which he would not indulge to others; ſince he and the reſt of Mankind, however they do conceal or check their Sentiments or Reſentments, are both ſelf-conſcious of their own Miſcarriages, and mutually conſcious, when others tranſgreſs and prevaricate from the Rule of Manners.

By this natural Principle we are more firmly engaged than by human Laws, its Rule being a Rule of Righteouſneſs, more perfect and uniform and permanent, more extenſive and indiſpenſible, and without its Influence all poſitive Conſtitutions fail of Effect.

For by this more general Law we are not only prediſpoſed, but engaged to Obedience to the others: And as it hath obtain'd, under the many different Circumſtances of Time, Place and Life; ſo does it exhibit Maxims ſuitable to thoſe Circumſtances; ſome adapted to the Infancy of the World, others to ſucceeding and latter Ages; ſome reſpecting Man in a ſeparate, others in a relative and more public Capacity: for all its Rules fall not within the Compaſs of a private Life, but have their regard to all Conditions, whether

natural or civil, ſocial, or more confin'd; in all which their Authority have Place. The Summary of the Law of Nature, of Nations, or diſtinct States or Communities, and the OEconomy of Families, being explained by diverſe but not contrary Principles.

However ſome Gentlemen refine upon the Works or Secrets of Nature, (in which they would ſeem to diſcover new Worlds before unknown to the plain Traveller) I am ſure no Man of common Senſe, that does not tread in Paths that lead to very dark Precipices, can think but that our firſt Parents, whatever hath been before ſuppoſed, came into the World at full Age, in a qualify'd State of Perfection; nor could they but be apprized from whoſe Power and Goodneſs they derived their Being, with an enlarged tho improvable Knowledge of Nature and Morality, the firſt referring to the difference of Creatures in the World's Animal, and in ſome Meaſure the intellectual Syſtem; the other to the difference of Actions on which Reaſon determines. Since their Time every Man has a Notion, Capacity, and Aptitude to know, and perceive what is offered him; and tho his Ideas cannot exiſt in his Mind without, and before Perception, but are truly obſerved to owe their Being to the Operation of the Underſtanding; yet as no Perſon can oblige his Senſes and Faculties not to receive Impreſſions; ſo he cannot poſſibly withſtand the Power of Conviction. And tho the Ideas may

not

not be allowed to be independent, congenite, and coexiſtent with the Child at his Birth; yet they cannot but be coexiſtent with the Frame and Order of a rational, ſociable, and improvable Creature, advancing in Years: as at firſt the tender Shoots, then the Leaves, Bloſſoms, and Fruit are to a Tree, when the Spring, Summer, and Autumn Seaſons have diſpens'd their Favours, and the benevolent Influences of the Sun, and of ſoft Showers, cooperating with the Growth and Maturity of the Branches, open the rich Treaſure of Nature that before lay concealed within the Root and Bark.

In the mean time, it is no Diſparagement to the Conſtitution of our Nature, that many Things occur by Inſtitution, and others, as particularly Speech, by Imitation, when the Notices thereby conveyed to us are received and retained by Powers that flow from the rational Soul, and its diſcerning Qualities, which govern and determine our Thoughts, however different the Characters may be.

And as our ſaid firſt Parents had the Perfection of Being, with the Advantages both of the Animal and Rational Endowments derived to them from the great Architype of Power, Knowledge, and Wiſdom; and as it is no leſs evident, that God eſtabliſhed Reaſon as the Medium by which we apprehend our Duty, and as his own Vicegerent, whereby, without the Mediation of his own extraordinary or miraculous Concurrence, he adminiſtred

ſtred thoſe general and particular Inſtructions, referring to the before-mentioned Conditions and Relations of Mankind, however confin'd or enlarg'd: It thereby appears, that he has not failed to approve his own beneficent Indulgence to us, and to exhibit a Plan of the Obligations by which we are bound to him and to our Neighbour.

And from hence it is apparent, (as was at firſt laid down) that there is a Communion between God and Man, and between all Mankind by Nature, and that conſequently there is a Communication of reſpective Offices; the Care and Good-Will God bears to us being defined by Providence, the Regard Man hath to his God, bearing the Name of Religion, and the Diſpoſition Man hath to his own kind being called Humanity.

It is a juſt and uſeful Speculation to conſider the Wonders remarkable in our Creation, as alſo how from the original Pair ſo many Millions have proceeded; how from one Society in the firſt State of Nature, Mankind became canton'd into Tribes and Colonies, and the chief Heads of Families: Conjugal Society producing as Children, ſo paternal Authority, the Sovereignty of Fathers, neceſſarily terminating in a Dominion over their Deſcendants; the greater Families (as the leſſer ones by a Coalition for their Security) producing Kingdoms. Every Nation in the more early Times ſubmitting to the Authority of a King, by whoſe Will, as afterwards by particular Laws

Laws or Conſtitutions, and Cuſtoms, Mens Rights and Intereſts became diſtinguiſhed. In which Series and Progreſs of human Affairs, God's Wiſdom and Goodneſs determined upon the Inclination and Exigencies of our Nature.

I hitherto ſpeak the united Senſe of mere natural Men, ſuch of them, I mean, as have not been placed out of the common Road of Obſervation and Experience; nor have framed their Conduct by a deliberate Choice in Derogation of their ſuperior Faculties, and in a manner diſagreeable to their moſt juſt Idea of things. And yet the bold Speeches, Actions, and Prejudices of the degenerate, vain, careleſs, and outrageous, are not without ſome Benefit, becauſe the Integrity of the upright, innocent, induſtrious, and well-diſpoſed are hereby ſet off with greater Luſtre, both of Merit and Example: For if there were no mad Men, Scoffers, Fools, Knaves, and Extravagants; Truth, Prudence, and Honeſty, tho they would maintain a no leſs indelible than amiable Character, would ceaſe to be a Diſtinction.

'Tis a Remark of the *Pagan* Philoſopher *, that, as Man under the Guidance of Reaſon, is the beſt; ſo when he grows irregular, he is the worſt of Creatures. And the Cauſe aſſigned by him is this, that ſince Injuſtice and

* *Ariſtot.* de Polit. l. 1. c. 2.

Wicked-

Wickedneſs are dreadful when armed; therefore Man being furniſhed with the offenſive Weapons of Cunning and Power, and too apt to be biaſſed by a perverſe Inclination, he muſt commence a moſt profligate Animal, unleſs he be under neceſſary Reſtraints.

Which Reſtraints (not omitting however in the account the happy Infection, as ſome are pleaſed in their Drollery to ſtyle it, communicated to him from his Anceſtors) every wiſe and good Man, who by his own Reaſoning and Conſideration of things hath an internal Evidence and ſettled Judgment of the neceſſary and moſt important Truth, hath from himſelf; and by a general Conſent of Mankind, they have been reſolved into the Obligations of Religion, Order, and Property, which are the three fundamental Principles (tho perhaps the ſecond may include the latter, and have a great Intereſt in the firſt) on which all Political Syſtems have their Superſtructure, and without which the World would become a rude Chaos, or a howling Wilderneſs.

We are not, I confeſs, ſo happy as to correſpond with the Sentiments of ſome Idolizers of human Reaſon, (conſidered, as they ſay, in its free and undebauch'd State) who diſcard good Nature and Benevolence from any Concern in our Inclination to Society, and explode a Dependance on a ſuperior Power, as a Matter built on a falſe and treacherous Suppoſition; repreſenting Religion as a Bugbear to affright Fools, and human Authority as a

mere

mere Uſurpation. I ſhall exhibit a Specimen of theſe Gentlemens Airs, and they will pleaſe to excuſe me, if the Relation appears as fantaſtic as the Courtſhip they pay to themſelves, or *Endymion* to his Lady.

They ſeem to inſinuate, that ſome no leſs ſubtle than doughty Wight, to gratify an ambitious and aſpiring Temper, did by Expreſſes ſent by truſty Meſſengers to the Lands of *Cuſh*, *Put*, and *Lud*, of *Gog* and *Magog*, of *Britain*, *Tedſo*, and *California*, of *China* and *Germany*, of *Japan* and *Peru*, of the Inhabitants bordering near the Northern Ocean, and the ſcorching Banks of the *Nile*, and of *Niger*, the River of the *Amazons*, and of the Lakes of *Canada*, and to every other Nation, Language and People under Heaven, ſummon ſome few Perſons out of each Diſtrict, to appear and give him a Meeting on the great *Atlantis*, without the Streights of *Hercules*; to which Place of Rendezvouz ſuch as were not furniſhed with artificial Wings or Boats, might have waded or walk'd from the adjoining Shores thro' the Water on Stilts; it being practicable in the primitive Time, as the *Egyptian* Prieſt in *Plato* relates, with a common Oar to have touched the Bottom of the Sea that encompaſſed the Fairy-Land: That theſe Worthies conform'd to the Summons, and being aſſembled, held a Conſultation on the moſt eminent Cliff of the Iſland, then covered with a propitious Cloud; and after many dark and cloſe Debates, unanimouſly agreed, as to ag-

grandize themſelves, ſo to enſlave the reſt of Mankind, by tying them down to dull Morality and Rules, to the fictitious Notions of a ſupreme Being, and of a Providence, of future Rewards and Puniſhments; of the pernicious Diſtinctions of Juſt and Unjuſt, of Right and Wrong, of *Meum* and *Tuum*. That as this was the firſt great *Schiſm* by a deliberate Invaſion upon Nature; ſo the Reſolves had Conſequences of fatal Malignity.

For the Brethren of this goodly Society having given a finiſhing Stroke to the Conſultation, did, upon their Arrival at their reſpective Homes, ſoon diſplay a Maſter-piece of their Art, and by wonderful Management prevailed ſo far, as not only to eſtabliſh the Authority of a God, but to conſtitute themſelves his Deputies; at which time, and not till then, ſuperſtitious Fears, religious Chimæras, and Reverence to Superiors crowded upon Mens Minds: So that Prayers and Sacrifices, Propitiatory, Expiatory, and Euchariſtical, with other chargeable and pompous Services grew familiar, Tables of Laws were publiſhed, and Tribunals erected, to gratify the Pride and Avarice, the Ambition and Tyranny of ſuch as deſigned a Spiritual and Temporal Uſurpation.

Theſe haughty Oppreſſors of Mankind having obtained their Ends, and made Deluſion and Fallacy to paſs under the Notion of Benevolence; the Cheat would never have been diſcovered, had not Fortune (which ever favours thoſe, who, like the eighth wiſe Man of *Greece*,

Greece, are endowed with an extraordinary Penetration and Attention) betrayed the Secret: For the original Debates and Concluſions (together with ſome original Contracts) were, as they ſay, committed for ſafe Cuſtody, to a very ſtrong Box preſerved in the Archives of *Ariſtophanes*'s Commonwealth of Birds in the Clouds. However, that as the Convention had been held in the Extremity of Winter, ſo the Harangues of each Stateſman (as they were afterwards called in Contradiſtinction to the Populace) were, when ſpoken, immediately frozen in the upper Region of the Air, and a Counterpart of whole Intrigue became figured in hoary Characters on the icy Trumpet and Trophies of *Boreas*, which, by means of a tempeſtuous Tornado, falling from his Hand into the lower and more warm Part of the Atmoſphere, the congealed Miſchief gave way to a Thaw, and each Word was diſtinctly reſounded, and as ſoon conveyed to the Ears of our Favourites of Chance; whereby the foul Myſteries of Equity and Juſtice, of Polity and Religion, of King-craft and Prieſt-craft were diſcovered: And that from this *Æra* or happy Period the celebrated Orders of Free-thinkers and Free-booters dated their Origin; who, in Pity to abuſed Mankind, eſteemed it their Duty (tho otherwiſe ſcorning to be ſubject to Obligations) to publiſh the whole of the Cheat, that prevailed in the pious Times, to the Ruin of native Courage, primitive Equality, naked Liberty, and natural Independence.

A Diſcovery no leſs ſurprizingly great than generouſly explained, and which fixes the Longitude as well as the Latitude of Principle.

I preſume our Scoffers will not think themſelves miſrepreſented by this or the like Copy of their rare Conceits, much leſs be offended that we oppoſe, no very ſerious Arguments to their Drolls; For ſince they prefer the Character of Wit to all Dowrys of Nature, and turn Truth into Jeſt; as Banter ſeems to be their Profeſſion and Talent, ſo it is their beſt Refutation.

But leaving theſe Refiners to be admired by themſelves, I return to our old Maſters, with whom Religion, Order and Property, do ſtill maintain their Ground, and crave Liberty to ſpeak in their Senſe, as well as under their Protection.

By Religion we own the Sovereignty of God, who is a neceſſary, ſelf-exiſtent Being, invariable, infinite, and omnipreſent; we render him the ſole Tribute of Worſhip, we acknowledge his Wiſdom and Goodneſs viſible in the Works of Creation and Providence; we ſubmit to his Power, which he delegates to his Vicegerents, and we recognize his Juſtice, as accountable to him both in this and the next World.

Religion diſtinguiſhes our Character from Beaſts, and we thereby have an Intercourſe with the immaterial World, however the Diſciples of the looſe Comedian of *Athens*, to whoſe

whoſe Jeſts and Artifice *Socrates* fell a Victim and Martyr, deride the Notion. It obliges us alſo to the Love of one another, as God's Children, as well as Brethren by Nature; however violently the Family of *Cain* or *Nimrod*, or however profanely our wanton Senſualiſts inſult the Doctrine.

No Nations or Community of Men, have been without ſome Veſtige of Religon, and in their many Appeals to God by the Solemnity of Oaths, and other Purgations, they have in all Ages evidenced great regard of his Juſtice, Omniſcience and Veracity; nor have Princes been more eſtabliſhed, than when their Subjects have paid a public Reverence to the Divine Authority and Attributes; whereas, wherever looſe Principles have obtained, Government hath been ſeldom ſecure from open Violence and ſecret Conſpiracies.

And, as God is a God of Order, ſo the Diſpoſition of human Affairs does bear a reſpect to the Idea which God hath ſet us *. For Man after his Creation copied from the Work of the grand Architect, and he and his Poſterity framed the Political Syſtem, as God did the natural one, in a due Proportion and Harmony: not that he took his Meaſures merely by Example, but by Inſtitution alſo, as well as from the neceſſary and gradual

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* Vide *Stob.* Serm. cap. 98.

Courſe of things, ſuperintended by a ſuperior Cauſe.

God at firſt inveſted Man with Sovereignty over this lower World; when *Eve* was produced, ſhe was placed in Subjection to him: In like manner he obtained the Paternal Authority. And as all Fathers have an affectionate Concern implanted in them for their Children's Safety and Peace; and as there is a juſt and reaſonable Return of Duty from Children to their Parents; the firſt being an Obligation of Care, Tenderneſs, and Affection, the other of Gratitude and Submiſſion; ſo thoſe Obligations were moſt eminently conſpicuous in the firſt Ages, when the natural Fathers of Families, as I have already intimated, (and with which they who are no Friends of Sir *Robert Filmer*'s Hypotheſis concur *) by an inſenſible Change, became the Political Monarchs of them too. And as they chanced to live long, and leave able and worthy Heirs, for ſeveral Succeſſions, or otherwiſe; ſo they laid the Foundation of the Kingdoms.

It is not therefore to be diſputed, but that Monarchy had the prior Title of all Governments; and as in all Families the Elder had the Prieſthood and Preheminence, ſo in the regal ones the Firſtborn became the Patriarch,

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* Puffend. de Offic. Hom. & Civis, lib. 2. c. 3. Locke *of Civil Government*, c. 7.

and

and generally held the Excellency of Dignity and Power, as a Mark of Birth-right, and natural Dominion. Not that this Right was uninterrupted, indefeaſible, or unavoidable by their own Acts, or other extraordinary Caſes: Or that no other form of Government might then have been introduced, when Men fell into a qualify'd State, as of later Times the *Venetians* and *Dutch*, (whoſe Conduct is admirably vindicated by *Sabellicus*, *Antonius*, *Bonſinus*, *Contermus*, Father *Paul*, Cardinal *Bembo*, *Grotius*, and *Dominic Baudius*, in his elegant Speech to our King *James* I.) and other Ariſtocracys and Commonwealths are known to have done; the Governments introduced by thoſe wiſe States being adjuſted to the Claims of the utmoſt Neceſſity, and for Self-preſervation, founded on a propitious Providence not wretchedly diſtorted, attempered to the Circumſtances of Time and Place, and the Sovereignty lodged in their Senates purſuing the full Intendment of Order, and bearing the Stamp of the Divine Authority, as all juſt and righteous Governments do.

How the lineal Succeſſion of the antient Monarchies came to be interrupted and defeated, is apparent from holy Writ and profane Writers. The large Extent of the World after the Flood made the Partition of Dominion, and the Separation of Intereſts neceſſary; as did alſo the Confuſion of Tongues: For tho before that Diſorder the Children of one Patriarch might not have been over-fond to have mix'd with

with thoſe of another, further than they were obliged for their apparent Convenience; yet, as the great Bodies were then forced both to ſeparate and to ſeek diſtinct Habitations under reſpective Leaders, being Men moſt famous and of greateſt Renown of the ſame Language, tho perhaps not intirely of the ſame Lineage; ſo 'tis probable, that the Confuſion (which was deſigned as their Puniſhment) might in this reſpect alſo anſwer to its Character, by breaking in upon the antient Order of Succeſſion: they who had been the Princes and Subjects of one and the ſame Tribe, ſpeaking unintelligibly among themſelves; and therefore Perſons of each Dialect, when they joined together, were, upon a Defect of Rulers, reduced to the Neceſſity of electing Captains and Governours, as in that Tornado of Affairs beſt ſuited their Intereſts or Inclination, according to the Opinion they conceived of his Worth or Qualifications, which might anſwer *Ariſtotle*'s Species of Monarchy called the Heroic.

The Ambition and outrageous Temper of particular Perſons turned the Stream of Power into different Channels: and thus *Nimrod* is affirmed to have derived his Name from his Rebellion againſt his Father, Grandfather, and Brethren *, as well as his Uſurpation of the Imperial Sway, in Derogation of the Rights of

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* *Bochart.* Geogr. Sacra, lib. 1. c. 2. & lib. 2. c. 2.

other

other Princes. In after times the grievous and intolerable Oppreſſion of Tyrants made way for a Defection, and in ſome Places for the intire Abolition of the kingly Name; and in other the Levity and Inconſtancy of Mankind, particularly of the *Greeks*, and many other Borderers on the Sea-coaſts, whoſe Characters Hiſtorians deſcribe in foul Letters: In fine, the Inroads of Foreigners, the Power and Artifice of Male-contents and reſtleſs Men at home, and the Caprice of the People, introduced either an Excluſion of the old Families, or made the Governments elective; ſome Governments being more deſpotic than others, ſome limited to particular Acts of Juriſdiction, and abridged in the Exerciſe of Power, or merely temporary, which the other Species of Monarchy mentioned by the Philoſopher ſeems to point at.

But however Government was founded, and whatever Turns it has had, or Forms have been introduced, 'tis certain that the ſocial Diſpoſition, that God has made inſeparable to our Natures, adminiſtred to regular Communities, all which are founded in Power and Subjection, to which Command and Obedience are the inſeparable Appendices; and hence does ariſe a Reaſon for the Diſparity in the States and Conditions of Men, as alſo for the reſpective Obligation between Superiors, Inferiors, and Equals: For ſince there is an implicit Compact between all Men by Nature, for equal Advantage and common Security, the

Compact ſeems expreſs, and to be enhanced rather than ſuperſeded by the Laws of Community and Order; unleſs we ſuppoſe Reaſon to have no Aſcendency in the Civil State, which is an Improvement upon the Natural, by which, if all Men are under Obligations one to another, certainly Princes, Subjects, and Fellow-Citizens, are more ſtrictly bound. On this Conſideration Kings have borne the Style, not only of Fathers, but of Paſtors and Leaders, which import Vigilance for their Peoples Defence and Security, as well as their Peoples Dependance on their Care, and an entire Subjection to their juſt Commands.

And how Princes came to be graced with the Title of Gods in the Writings of the inſpired Penmen, as well as of the profane Authors, is as readily accounted for, as that the Name of Viceroys, Lieutenant-Generals, and Podeſtæ, ſhould be the Character of thoſe who are intruſted with their Authority from their Sovereigns.

It is well known, that as of old Time Perſons celebrated for their Prudence, and other Virtues, were called the Sons of *Jupiter* *, ſo the primitive Inſtitutors of Government were, by a faſhionable Error, deify'd and worſhipped by ſucceeding Generations; at leaſt the moſt accurate Reducers of Politics prevailed ſo far, as to be eſteemed the Favourites of

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* Gell. Noct. Attic. lib. 15. c. 21.

Heaven,

Heaven, and to have derived their Syſtems from a ſuperior Direction: Inſomuch that *Plato* from a common Report in his Days, affirmed *, that the ancient Lawgivers were the Sons of the Gods, that they gave Laws to their Brethren, and to the Heroes deſcended from them. And in another Place he declared, that no one ought to inſtitute a Law without the Conſent of the Gods: which evidenceth what a ſacred and divine Concern Legiſlation was in the Judgment of the very *Pagans*. And truly when a righteous Law was at any time enacted by them, its innate Goodneſs recommended it as the Gift of God; for ſo it was alſo called by the ſame Philoſopher, as alſo a Divine Invention, with the like Air of Expreſſion I conceive as he ſtyled Method to be: for Order in Diſcourſe and Government is the Accompliſhment of right Reaſon, which is a Ray of Divine Perfection; and 'tis abſurd to ſuppoſe, that God ſhould not be the Author of our rational as well as of our animal Motions, and that he ſhould direct the Means of our Being, and overlook our Operations; eſpecially in the grand Affair of Government, whereby collective Bodies are united, and their Peace effectually ſecured.

And truly, however ambitious ſome Princes have been thought for pretending an Alliance to Heaven, I think they may not be

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* *Plato* de Leg. Dial. 9. Id. Dial. 4.

blamed for deriving their Authority from thence, ſince a Juriſdiction over Life cannot be granted or acquired by any Right merely human: But God the Author of our Being, and the Arbiter of our Fates, has delegated it to Princes and Sovereigns; which Delegation of his, with other Branches of Power, and Determinations of Right derived from him, and over-ruled by his Providence, is the Fountain of the Civil Law, and of that of Nations. And, as one excellently obſerves, by the due Execution of human Laws, God does in a great part govern the World to moſt holy Purpoſes; it is eſpouſed by him, and taken into his own account, and every Sentence is ingredient to the Retribution of the great Day.

Many Things in human Government are ſaid to reſult from the Union; but the united Body is a Creature (not altogether perhaps ſo diſtinguiſhed as Mr. *Hobbes*'s Leviathan or Behemoth) of God's Providence, and the Authority derived to Princes and Magiſtrates, by virtue of the Union, is originally from above, as our Saviour told the Heathen Judge; ſo that Power is by Participation in Man, but in God eſſential, who is the Architype, Centre, and Standard of Juſtice and Wiſdom.

God's Honour and the Good of Mankind, as well as the Order and Nature of Things, require that the World ſhould be governed by the Mediation of ſecond Cauſes: For how (even in a State of Theocracy) can God become the Object of Senſe? And therefore, as any Perſon,

ſon, who is not a Stranger to Contemplation, may trace the Origin of Power by Notices impreſt on the Intellect taken from the firſt Cauſe to the Effect; ſo by the Intuition of the middle Cauſes, he may aſcend to the firſt by an eaſy Scale of Reaſon: For it is a vain Idolatry to deify the Inſtruments, and at the ſame time neglect the Energy and Concurrence of the ſupreme Mover, that gives Commiſſion, Deſign, and Perfection to the Work; as tho they who act miniſterially, were not employed in their Maſter's Buſineſs, or did it by Virtue of their own Authority.

And as the great Truſt, repoſed by the ſupreme Governour of human Affairs in earthly Princes, ought to be inviolably purſued; ſo how Kings did by their agreeable Conduct and moral Excellencies, merit as well as bear the Style of Gods, is aptly explained by *Diotogenes* the *Pythagorean*, and by *Stenides* the *Locrenſian*, another Philoſopher of the ſame Sect, who affirmed *, that a Prince does repreſent the Image of God among his Subjects, by purſuing the Rules of Wiſdom, Fortitude, Juſtice, and Goodneſs; and that by theſe Qualities he gains Veneration from Men. Equivalent to which is the Saying of *Solomon* †, that a Divine Sentence is in his Lips, whilſt his Mouth tranſgreſſeth not in Judgment, and Wickedneſs

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* Apud *Stobæum*, c. 8.

† Prov. xvi. 10, 12.

is an Abomination to him. And as we are to expect no worſe Doctrine from Chriſtians, ſo 'tis our Happineſs, our *Engliſh* Lawyers have expreſt their Judgment in this Caſe, agreeable to the higheſt Touchſtone of revealed Truth: *Henry de Bracton* may ſpeak for the reſt *, *When the Prince*, ſaith he, *does equal Juſtice to all Men, God does reſide in him, and maintains his Juriſdiction; for by the Power of Right he acts as the Vicar and Miniſter of God on Earth, ſuch Power being exerciſed by God himſelf, whereas all injurious Power is of the Devil and not of God.*

To the Exerciſe of which injurious Power after Ages put a prudent and neceſſary Reſtraint. For whereas at firſt, as we have already noted, the Arbitrary Will and Pleaſure of Kings, ſome of whom vilely degenerated from their Forefathers Example, was the ſole Law, and obliging to their People, and againſt whoſe Determinations there lay no Appeal: Therefore this Adminiſtration being found an uncertain Meaſure and Standard of Juſtice, upon Conſideration of this Failure and Defect, which affected every Body in its Conſequence, Princes and People upon mature Conſultation, enacted poſitive Statutes and Conſtitutions, bearing in their Front, and in the moſt proper Notion the Name of Law, which, according to the judicious *Papinian*, ought to be

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* *Bract.* de Leg. Tit. de Actionibus, lib. 3. c. 9. §. 3.

a common Precept, becauſe appointed for the comon Profit, as the Gloſs, followed therein by *Bartolus*, *Jaſon* *, and other Doctors, does determine: and to this Maxim the Sentence in the Edict of *Theodoſius* and *Valentinian* the Emperors, has a Reſpect; *'Tis a Declaration worthy of Majeſty*, ſay they, *for a Prince to acknowledge himſelf bound by the Law, and to ſubmit to its Authority, which is greater than Empire it ſelf: Finally, that in their Judgments upon others they would not tranſgreſs this Oracle* †.

Now as the Law is the common Reaſon of the State, and the Diſtinction of juſt and unjuſt; ſo is it the Limit of Right, and the maintenance of Property, which is the Ballance of Things, as Order is of Conditions and Degrees. So that, paſſing from the Dominion that accrues by virtue of the Conjugal and Paternal States, of which we have already ſpoken, and the Herile which the Law of Nations introduced, and that of Nature and Society made neceſſary. Property, according to the reſtrained Notion in which we may now conſider it, refers to things Animate under the degree of Man, and Inanimate; ſome of which are natural, as Lands, with the Fruits and Profits; others artificial, as Houſes, Goods, and Inſtruments domeſtic, or for other Uſes, whe-

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* LL. 1. Tit. 3. Dig. 1. de Legibus, &c.
† LL. 4. Tit. 14. Cod. 1. de Leg. & Conſtit.

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ther of Pleaſure or Profit, with an entire Dependance however on God, the Lord *Paramount*, and the grand Proprietor of all Things that he made, and which are continued by a perpetual Flux, and Communication of his Goodneſs.

As in the very Notion and Terms, that which is proper is contra-diſtinct to what is common; ſo Propriety excludes Community.

In the Infancy of the World, the Sons and Progeny of *Adam* had diſtinct Employs; *Cain* was an Husbandman, and purſued Tillage as well as Maſonry and Carpenters Work; *Abel* was a Shepherd, a Calling probably reaſſum'd, together with the mathematical Studies, by *Seth*; *Jubal* was a Framer of Tents, and an Herdſman; *Tubal-Cain* was a Worker in Metals, and with his Family, might have exerciſed himſelf in mechanical Operations: others had different Cares and Profeſſions. The Produce of their reſpective Induſtry (a Part however without Controverſy being paid as Tribute to God, and as an Acknowledment to their Parents, eſpecially in their declining Years) conſiſting of Corn, Clothing, and other Neceſſaries, being not in common, but communicable by Beneficence, by Exchange, and by Alienation on Conſiderations; ſubject alſo to Devolutions, and other Ceſſions of Right.

Upon the World's Increaſe, as Settlements were made, one Body of People enjoy'd their Poſſeſſions excluſive of others, by the Title of prior

prior Occupancy, and their private Properties became aſcertained by the Allowance or Direc-rection of their Princes, and the concurrent Suffrage of the People.

It is the Obſervation of *Puffendorf* *, that the Precept of Nature, about abſtaining from what is another's, then firſt began to exert its Force, when at length Men by mutual Agreement (the Concurrence in the Patriarchal Days, of their Fathers or Forefathers Judgment or Arbitration, perhaps not entirely excluded) had mark'd out and appointed what each Perſon ſhould claim as his own. Before which time it lay concealed, as it were virtually and potentially in that general Precept of ſtanding to our Covenants, and not to injure the Right of our Neighbour: Nor that it is any Abſurdity to affirm, the Obligation we lie under not to invade the Goods of others, is coeval with human Race, and yet that the Diſtinction of *meum & tuum* was afterwards ordained, in manner, as when we ſuppoſe ſeveral particular Commands to be implyed in ſome general Rule.

That a Houſe is more ſufficient than one Perſon, and a City than a ſingle Family, is well concluded by *Ariſtotle* againſt *Plato*'s Hypotheſis; to which I may add, that a State or Kingdom is yet the more ſufficient: And in theſe collective Bodies there is a Union of Intereſt, and by Diſcipline, tho not a Community of

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* *Puffend.* de Leg. Natur. c. 4. N° 5.

Goods and Perſons; the firſt of which would induce Negligence, Diſcords, and precarious Enjoyments, and a Defect of Humanity; the other would breed Confuſion, and an entire Diſſolution of Affinities and ſolid Friendſhips.

As after the Deluge, when Men and the other Animals (by the ſame aſtoniſhing Providence by which ſome of each Species had been preſerved from periſhing by Water, and by the ſame Power which at firſt produced all things out of nothing) were ſcatter'd again over the Face of the Earth; People upon the Confuſion of Tongues, diſtinguiſhed by their Tribes and Colonies, were, as hath already been ſaid, obliged to ſubmit to ſuch Governours whoſe Language they underſtood, ſo were they neceſſarily confin'd to Lands and Poſſeſſions, no leſs ſeparate and diſtinct than their Dialects. Confuſion in that reſpect proving, as the Foundation of Alliances, ſo the forcible Reaſon of aſcertaining the Dominions and Properties claimed by thoſe Bodies of Men; to which the Scite and Nature of the Countries they inhabibited did in a great meaſure contribute: For being ſettled in their new Seats, they found in many Places at laſt a *ne plus ultra* put to their Excurſions by lofty Mountains, by vaſt Lakes, by deep Moraſſes, by a wide Ocean, by thick Foreſts, torrid Sands, inhoſpitable Deſarts, or by other Boundaries. In the ſame manner all Governments have taken care to ſet Limits to Mens Pride, Rapaciouſneſs, and Covetouſneſs, and

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diſtinguiſhed the Goods and Poſſeſſions of their Subjects; which to tranſgreſs is not only an Injury to private Men, but a bold Invaſion upon the Laws of the State, and the Authority of our Governours, under whom, as they from God, we hold our Lives and Properties ſecure.

But as God deals with Man, not only as a rational, but as a laps'd, perverſe and falſe Creature; ſo we are to be conſidered one by another, not only as ſociable but depraved Beings: for ſuch hath been our Degeneracy, and the Prevalency of evil Cuſtoms, that Reaſon, which God conſtituted his Vicegerent, the Perfection of our Nature, and the Bond or Inſtrument of Society between Man and Man, hath been in a great meaſure extinguiſh'd, and the Senſe of Duty as frequently over-maſtered by corrupt Paſſions, and pernicious Examples. The evil and licentious Practices of Men, as they were the Evidence and leud Effect of their corrupt Will and Appetites, ſo this Failiure in their moral Conduct ſoon obtained by a fatal Malignit on their Underſtandings; whereby their Principles became no leſs reprobate than their Lives, and a Spirit of Slumber did gradually ſeize on their Minds, and ſtifled the Clamours that would have riſen there.

It was not likely therefore they ſhould retain the Knowledge of God, or the genuine Notions of Humanity, who gave themſelves up to vile Affections, and were filled with all

Unrighteouſneſs; nor was it probable they ſhould preſerve their Judgments entire from Error and Prejudice, who, as ſtupid Slaves, abandoned to their Luſts, were hurried inconſiderately into tragical Miſchiefs, and propagated the moſt abſurd Schemes of Folly and Madneſs. A diſmal Silence was impoſed on the Oracle in Mens Breaſts, which, whatever Reſiſtance it made, loſt its Dominion over them: and it was the Policy of theſe Times to ſecure the evil Principles from being enquired into.

How Religion ſuffered in the general Shipwreck of good Manners, is evident from the Barbarities and abominable Rites in the *Pagan* Worſhip, and the Indulgencies given People to be leud by Authority.

What Confuſion was produced in the Order and Government of the World, is no leſs apparent from the Accounts of antient Times. The Ramparts which God and Nature had placed between Nation and Nation, diſtinguiſh'd alſo by difference of Dialects, could not reſtrain their Ambition and Outrages. And truly on what Foot were the moſt famous Empires of *Aſſyria*, *Babylon*, *Perſia*, *Greece*, and *Rome* it ſelf founded? The latter, tho ſtyled the Seat and Centre of Juſtice, would, as *Lactantius* informs us out of *Cicero*, have been reduced to a few poor Cots, and the extremeſt Poverty, had ſhe been obliged to Reſtitution: Her Juſtice however had no ſuch Medium, but was of an equal Size with that of

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the *Goths*, and other northern Nations, ſo infamous for their Depredations at *Rome*, and ſo troubleſome to the World.

Now, if the greateſt Part of human Race erred ſo egregiouſly from the common and immutable Laws of Reaſon, which the ſovereign Arbiter of the World had imprinted on their Minds; if the Conſpiracy againſt natural Righteouſneſs was in moſt Parts ſo legionary and prevailing, that God, in Benevolence to his Creatures, was obliged to diſcover himſelf to them (and many neceſſary Truths) by a new Revelation; and if after that Diſcovery, his own People, more obſtinate and diſtracted than the very Heathen, broke thro' the Terrors of a jealous as well as the Endearments of a gracious Law-giver, abandoning his Law, and bidding open Defiance to the Majeſty of Heaven; what a mere Cobweb, comparatively ſpeaking, is the Authority of earthly Princes and States (however entruſted with their Commiſſion from above) to reſtrain the Exorbitances of Men? Indeed their Province is a ſpacious Field of Labour, and their Atchievements no leſs difficult than commendable.

And yet that there ſhould be ſuch Benefactors to human Kind, and ſuch Guardians of the public Peace and of private Right, God, Nature, and Reaſon command.

The Support of which, as it is the genuine Deſign of Government; ſo thoſe Conſtitutions which

which contribute to that End, are, of all other, moſt worthy of account.

There are three main Advances towards that End; the firſt by a Prevention of Evils; the ſecond by an Encouragement of Virtue; the third by an Application of proper Remedies to the Breaches of a Law, when Men act in contempt of Authority: of which the firſt is moſt available to the Security and Reputation of a State.

Thus, where an Addreſs to Buſineſs grows into a national Eſteem, and a primitive Care is taken that Men ſhall not miſpend their Time; where there are few or no bad Examples, no looſe Companions, no Nurſeries of Vice, nor Proſpect of Eaſe or Satisfaction in an unactive Life; every one will find himſelf employed, and few can have the Leiſure, much leſs the Encouragement, to violate their Duty.

One Man would be a grave *Cato*, or a courteous *Lælius* to another; and the Interchange of Reſpect between Prince and People, Fellow-Citizens and Neighbours, would either antidote or ſupply the Reaſon and Exigency of penal Sanctions: And he would appear no leſs monſtrous than unnatural, who would walk in a dangerous Path by himſelf, whilſt others tread on ſurer Ground, and act by a rational, unbribed and unconſtrained Diſcharge of their Obligations. And if the avoiding ſuch indirect Roads be a Point of Wiſdom, the Means by

by which it is attained, are to be eſteemed a juſt Concern in the School of Prudence.

Such in particular are the Fruits and Effects of good Education, and a ſtrict Diſcipline in the formirg of Youth, which Governours ſhould have among their earlieſt Cares: for there ought to be a neceſſary Dependence between OEconomical and Civil Inſtitutions, and we are to learn and practiſe the Office of good Citizens as well as of honeſt Men; it being a certain Truth, that the Parents, Overſeers, or Maſters Care, however confined the Pupil may be, does not terminate in a mere domeſtic Deſign, but ſerves as a Medium to a more perfect and a nobler End, *viz.* the common Good of his Country, in which he has a Communication of Intereſt, and for the Advancement of which he has an hereditary Concern, and Capacity equal with theirs.

The ſecond Advantage accruing to the Support of a State, is the adapting juſt and ſuitable Rewards to laudable Actions. It is indeed to be acknowledged, that Virtue carries its own Reward; and that, as Infamy is one, and not the meaneſt Puniſhment of Vice, or a conſtant Attendant to it, ſo a good Name and Reputation (which are equal to Riches and precious Ointment) are inſeparable to Probity and Virtue. But beſides this private Satisfaction, and the native Luſtre ſhining in Acts of worthy Citizens, the higher Powers diſtinguiſh with Marks of Favour whom they delight to honour; and in Countries where a regard is to

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it, (as ſhould every where be) Merit recommends Men to Poſts of Truſt and Dignity, and ſerves as a Counterpoiſe to their Frailties and Defects, (to which we are all in ſome meaſure obnoxious) as was more eſpecially obſerved among the wiſe *Perſians*.

But whereas neither Inſtruction nor Example, nor the aſſured Pleaſure, or other Benefits ariſing from doing Good, can always incline or oblige Men to their Duty; but too many pay the ſame Veneration to the Laws as the Heathen to the Statue of *Mercury*, by throwing their Stone at them; a Reſort to penal Severities hath ever obtained in all Conſtitutions, and been eſteemed a Matter of neceſſary Eſtabliſhment; as in a State of Nature, or where Equals are not ſubject to any human Power, a vindictive Animadverſion, ſeldom however applied to in a Civil State, except by the Moderation of a fair Self-defence, where Juſtice is not to be otherwiſe obtained.

Puniſhment and Penalty are taken from a Latin Radix, which at firſt was tranſplanted (with many other Words) from the Sea-Coaſt of *Italy* into the Dialect of the old *Romans*; for to what they called *Mulcta*, the *Pœna* of the *Oſci* was equivalent, being derived by them from ποινή or πόνος of their Neighbours the *Greeks*: which Expreſſions were frequently uſed by *Homer* to import all manner of penal Satisfaction, and ſo generally interpreted by

by the Antients, as *Pauſanias* and the *Roman Paulus* remark †.

By later Interpretations *Pœna* and *Mulcta* have been further diſtinguiſhed, the one being a ſevere, the other a moderate Animadverſion; the firſt ſpecially defined by the Law, the latter left to the Arbitrament of the Judge, and flowing by virtue of a mix'd Power, or of Juriſdiction, and not of abſolute Empire or Dominion, as the Lawyers ſpeak ††.

Now, as ποινή or πόνος, referring to Inflictions, whereby the Perſon of the Offender is ſenſibly touched, is derived from πένω, which denotes painful and ſlaviſh Labour. And as *ſupplicium* (another Word for Puniſhment) takes its Name, as ſome ſay, from *ſupplicare*, with regard to the earneſt Suit and Importunity of the Sufferer for Mercy or Releaſe from his dolorous State; ſo the common Definition of Puniſhment does bear an intimate Reſpect to thoſe Etymologies; Puniſhment in general being an Evil of Paſſion for that of Action.

Nor is it irregular that Puniſhment ſhou'd produce more Grief, Loſs or Diſſatisfaction to the Patient, than the Offence afforded him of Profit or Pleaſure, whether real or apparent; and as the Law does not ſuppoſe any Damage done to a Malefactor, however ſenſible he him-

† *Euſtach.* Il. 3. et alibi paſſim *Pauſan.* in Lacon. Dig. 50. Tit. 16. lib. 131. cit. per Aret. Probl. Theol. 69.

†† *Cujac.* ad Leg. 131. Tit. 166. Dig. de verb. ſignif.

ſelf may be of Damage accruing to him by the Conſequence of his Fact *; much leſs ought any one to have his Condition bettered by being an Offender †, which, in ſome Caſes, he might in a temporal Proſpect be, were he not puniſhed.

Every Penalty ſuppoſes a Crime committed againſt a known Law, and of Conſequence a due Promulgation of the Law, which is eſſential to its Obligation: For whereas many Things are forbid under certain Penalties, which have no moral Evil, or natural Turpitude antecedently in them, it is neceſſary that People, by ſome ſolemn Method of Conveyance, ſhould be inſtructed in their Duty, as well as informed of the Danger upon any one's Default or Miſcarriage: For tho the Law has its Foundation in the Things themſelves commanded or forbidden, yet it has the Decree, Edict, or Statutes of the ſupreme Magiſtrate, expreſt by Word, Writing, or other Sign for its Subject, otherwiſe Mens Judgments would not be determined, nor their Wills affected thereby.

And yet if there be a Breach (by one Fact committed) both of the common and ſtatute Laws, and a greater Puniſhment be enacted by the latter than by the firſt. The Puniſhment

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* *Pompon.* LL. 203. Dig. de diverſis Reg. Juris.

† Id. LL. 206, dict. Tit. Vide etiam *Dyn.* in Reg. 55. Locupletari.

directed by the Statute is to take Place even upon Strangers or others that might pretend Ignorance of the ſaid Penalty; becauſe the Event and not the Purpoſe is then conſidered: and ſo it was adjudged in a Deciſion at *Naples* *.

The above-mentioned Promulgation is neceſſary to all Laws of mere human and poſitive Inſtitution, but more eſpecially to thoſe that reſpect the higher Offences. Nor is the Reaſon of any ſuch Law to be called in Queſtion, when diſtinct Crimes are animadverted upon in one Province more ſeverely than in another, as the burning of Corn in *Afric*, and of Vines in *Mæſia*, as *Claudius Saturninus* notes †; or when one Nation allows or commands what another forbids, the ſovereign Will and the publick Good affording ſufficient Ground for enacting Matters of this Nature.

As the *Civilians* diſtinguiſh publick Crimes from private, ſo they do not neceſſarily recur to the Vocabulary, nor to the Inſcription of Titles, nor to the publick Accuſation, nor to the Puniſhment, nor finally to the Objects, or Perſons againſt whom the Offence is committed, but direct to the particular Conſtitution ††, by which the Crimes are ranged into any particular Claſs, to which other-

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* *Franc.* Viv. Deciſ. 55. 21. N° 7. & N° 14, &c.

† Lib. 48. Tit. 19. Dig. de Pœnis.

†† *Theod.* Col. Crim. Diſp. 1. th. 10.

wiſe they would not appertain. Nor is it a new thing, that the Character of ill Men ſhould vary in the criminal and penal Law, according to a popular Phraſe; as among the *French*, the Word *Ribauld*, which at this Day is uſually limited to expreſs an impure Perſon or Bawd, did in former time extend, as I think it does ſtill in *Italy*, to Thieves, Vagrants, excommunicate Perſons, and other the vileſt People *. On the other hand, the Notion of Felony hath been ſtretch'd by our Lawyers (eſpecially in our Acts of Parliament) further than the primitive Signification it held in the old *German* and *Feudal* Law, having been extended to denote other enormous Crimes †. And many things in the latter Ages have been blackened with that Reproach, which before appeared fair, or at leaſt indifferent in their Nature, or were mere Treſpaſſes, which *Bracton* affirms could not be convertible with Felonies ‡. The *Felonia Cordis*, which I find in *Fleta* ††, ſeems (like the *Lepra Animi*, mentioned by the other Author) to be an Expreſſion of a more general Importance, denoting the corrupt Quality of the Mind diſcernible in all wilful Of-

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* *Matthæus Paris* Hiſtor. Edit. *Watts* Hiſtor. *Henry* III. *pag.* 710.

† Spelm. Gl. Tit. Felo.

‡ *Bract.* Lib. 3. Tit. de Coron. cap. 3. §. 1.

†† *Flet.* cap. 16. tit. de Action. criminal. §. 5.

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fences, whether of a high or low Degree; being ſynonymous with Malice, with which the Adverb *felonicè* hath been link'd in many of our Criminal Proceſſes, and is a Form not to be receded from, or diſpenſed with.

From what hath been ſaid, it appears, that in every Crime there is a contempt of Authority, and a Deviation from an expreſs Rule. And as the Fact may be a Damage or Injury done directly or indirectly to others, and good and bad Men take themſelves (tho upon different Views) to be concerned in the Example, the Offender at the ſame time being to be conſidered either emendable or not; the Lawgiver has a proper Application to theſe Caſes, and arms his Statutes or Edicts with ſuch Proviſions as may guard his own Honour and Dignity, juſtify the Law, and take off the Imputation of Improvidence and Partiality in his Adminiſtration.

Now, as Crimes are uſually defined by the Law, and diſtinguiſhed by the Nature of the Puniſhments adapted to them by a temporary Proviſion or Remedy; ſo the criminal and penal OEconomy is particularly influenced by Circumſtances, ſuch as of the Cauſe, Perſon, Place, Time, Quality, and Event *.

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* LL. 16. Tit. 19 lib. 48. Dig. de Pœnis. *Bract.* lib. 3. tit. de Action. cap. 4. *Fleta*, lib. 1, cap. 16.

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Of theſe penal Applications ſome are alſo ordinarily declared by the Law, and properly called the Sanction, others are extraordinary and left to the Determination of the Judge, whoſe Determination however is not to proceed upon his own Caprice, or private Opinion, but to be moderated by Reaſon, and to be juſtifyed by a legal Diſcretion †.

Every righteous Law, Civil, Criminal, and Penal, (except in Governments merely deſpotic) refers to the time when Facts are committed, otherwiſe there can be no certain Rule of Duty; and to condemn Men in ſuch Caſes by a new Statute, ſeems to carry a perſonal Reſentment, which is ſeldom encouraged in wiſe States, and whenever (even in matter of form) ſuch Proceedings occur, they are generally attended with a Clauſe that forbids the odious Caſe from paſſing into a ſtanding Rule: Nor can I but admire an excellent Obſervation made by our reverend Judge *Stanford* *, that as the penal Laws have no Malice againſt any one, ſince at the Time they are enacted, they know not on what particular Perſons they may fall; ſo do they not oppreſs any one without ſufficient Premonition.

Cicero, and after him the *Roman* Juriſts, preſent us with eight Species of Puniſhments,

† *Mynſing.* Cent. 6. Obſerv. 97. N. 8.
* *Stanf.* in Pref. ad Pleas de Coron.

which

which are reſolvable into five Kinds * ; namely, Thoſe that affect the Eſtate or Goods, the Liberty or free Abode, the Reputation, the Body or Members, and the Life ; which laſt is called *Pœna graviſſima, noviſſima, ultima*, and by which all penal Demands are ſatisfy'd and cancelled †.

As Puniſhments are adapted to the Quality of the Offences, and clothed with the ſame Character ; ſo a Diſtinction of Crimes, and conſequently of Puniſhments, into capital and not capital, is reciprocal, dependent, and neceſſarily ally'd : And therefore the Projectors of an abſurd Clemency, who advance fond Conceits againſt the Magiſtrate's Uſe of the Sword, have not only *Moſes* and the Prophets for their Enemies ; but our Religion and common Juſtice, and the nature of Civil Conſtitutions condemn the miſtaken Charity, preſcribing Maxims that remain no leſs unalterable than the Connexion between reſpective Conſequences and Relations.

For upon what Pretence can we afford any Perſons the Benefit of God's Creation, who boldly diſpute his Being and Authority ; or that liſt themſelves by Compact in the Service of his old avowed Enemy in the Regi-

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* Damna, Vincula, Verbera, Talio, Ignominia, Exilium, Mors, Servitus. Vide *Bract.* Tit. de Action. cap. 6.

† Gloſſ. Noviſſ. in Authent. ſcenicas non ſolum Fidejuſſores in Princ. *Col.* 5.

See alſo Coke's *Inſtit. part* 3. *cap.* 101. *pag.* 212.

on

on of Darkneſs? This is plain Violence to Mercy, and as it cannot extort Gratitude, ſo does it take Part with the Reprobate, in his Conſpiracies againſt Heaven.

That Traitors are to be ſo diſpoſed, that the Gangrene may not ſpread and endanger the ſound Members, is a no leſs approved than ſafe Aphoriſm; and Favour loſes both its Deſign and Name where no Satisfaction can be made, but by the Death of the Malefactor, as in the Cry of Blood, Violences of an enormous Indignity, and thoſe unnatural Impurities which relate to the *Laian* and *Scantinian* Laws.

The Practice of moſt Nations hath generally ſeconded this Doctrine, whilſt Juſtice hath proceeded in the ordinary Courſe; nor may the Exceptions thereunto made be regularly claimed by private Men as their Privilege.

But that certain Penalties leſs than Death, might not, in many other Caſes, have ſuperceded our ſanguinary Extremities, is a Notion not very clearly explained: at leaſt in common Good-Will and regard to our Legiſlature, we ought to be ſo kind as to allow them an equal, if not ſome better Privilege, than Malefactors obtain, to the Condition and Circumſtances of whom a tender Reſpect is uſually had in awarding of Penalties *. And I find fifty or more Exceptions enumerated

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* *Tiraquel.* Tr. de Pœnis.

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by learned Men, on the account of which Delinquents are excuſed from Puniſhment; ſome of which Exceptions are no leſs mean and trifling, than Encouragements to the Evils the Law would ſeem to remedy. Now, if after the Eſtabliſhment of Statutes to prevent thoſe Evils, ſuch a Reference is had to Circumſtances in favour of ſingle Men who violate the Law, ſhall a Kingdom or Commonwealth, for whoſe Profit and Safety every ſuch Sanction was ordained, be excuſed the like Liberty of examining and ſtating the Circumſtances which render the Penal Proviſion ineffectual or miſchievous in its Effect? Shall a capital Puniſhment, whereby the Crimes have in no meaſure abated of their Force, be by Experience found to be an improper Application to the Iniquity of the Age and Place? Shall the like Executions where the Criminals might otherwiſe be fairly reduced, be eſteemed an undue Treatment of the Perſon? And yet muſt a whole Nation be bound up, by a fond Superſtition, to a growing Miſchief, and inſtead of redreſſing the Grievance, tamely permit it to obtain under thoſe Conditions? I ſhould rather think, ſince the Puniſhments are founded merely in political Convenience, which, like a State Compaſs, varies as the ſeveral Influences direct the Motion, 'twould be hard that the Reſon of continuing the Extremities ſhould be fatal not only to the Criminal, but to the Authority of the Legiſlators, as tho they were obliged to Rules and Preſcrip-

tions inconſiſtent with the Freedom and Sovereignty of Princes and ſupreme Magiſtrates, and dared not have attempted ſuch Alterations in Matters diſpenſible, as might have been for their Glory, and the Advantage of their Subjects.

Thoſe neceſſary Terms and Conditions of the new Diſpenſation might be provided for, and ſecured by the ſaving of Life, the Reformation of Offenders, the Exerciſe of a ſtrict Diſcipline, correcting the Contumacious, the diſcountenancing the Trade of begging, Vagrancy, and Idleneſs, and other public Benefits which ſuch a Regulation would introduce. And as in old time the Wool was prepared with other Colours before it was enriched with the *Tyrian* Purple; ſo a Delinquent would be obliged to ſubmit to preparatory Exerciſes, and to Management of Task-Maſters, whoſe Care would equal that of the moſt expert Fullers and Dyers of *Phœnicia*, before he would wear a Livery of a more agreeable Mixture than with what he at firſt was clothed.

But I muſt not anticipate what is the Subject Matter, if I am rightly informed, of a Diſcourſe prepared for the Preſs, which had its Foundation in a Tendency in our Senate, and the ſupreme Powers in other Nations, towards the reforming the Penal Scheme as to certain Felonies, eſpecially Theft, and introducing afflictive Services inſtead of the capital Animadverſion. An Affair in the Compoſition

poſition of which Humanity and Prudence ſeem to have an equal Share: and therefore, as it ought to be proſecuted and inforced in a more ample Form, ſo ſhould the Performance, if addreſs'd with Modeſty, and with deference to the Sentiments of our Superiors, be received with common Favour.

How that Eſſay may be entertained I know not, but I preſume it can be no Diſſervice to its Deſign, or even to the preſent Eſtabliſhment, that I have examined into the Nature of Government, and Laws in general, and enquired how Man's Reaſon (notwithſtanding the looſe and vain Objections made to it) diſpoſeth him to their Obſervance, as well as to be benevolent to his Species, and to purſue the Good of Society, of which the Laws have a ſacred regard.

Such a Conduct, as it would be irreproveable, ſo would it in a great meaſure ſuperſede and excuſe the Rigor of many Penal Sanctions now in Force.

FINIS.

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